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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

24 || ORACLE AMERICA, INC.

Case No. CV 10-03561 WHA

Plaintiff.

ORACLE'S PROPOSED JURY INSTRUCTIONS RE GOOD FAITH/BAD FAITH AND PROCEDURAL HISTORY

26

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William Alsup

27 | GOOGLE INC

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William Alsup

28 || Defendant.

ORACLE'S PROPOSED JURY INSTRUCTIONS GOOD/BAD FAITH, PROCEDURAL HISTORY

1 Oracle respectfully submits the following proposed jury instructions pursuant to the
 2 parties' discussion with the Court this morning, Tr. 11:40:20-1152:5, and in further response to
 3 the Court's request for briefing re willfulness and bad faith. ECF No. 1880. Oracle was in the
 4 process of drafting these instructions to submit as a proposal to Google when Google filed ECF
 5 No. 1905 setting forth its proposed Statement to the Jury Regarding First Trial and Appeal. The
 6 instruction set forth in ECF No. 1905 is irrelevant, unnecessary and prejudicial for the reasons set
 7 forth in Oracle's Response to Court's Request (ECF No. 1880) For Briefing re Willfulness and
 8 Bad Faith Before Federal Circuit Decision. ECF 1900.

9 Oracle maintains and does not waive the arguments set forth in ECF 1900. However, in
 10 light of the Court's concerns, and in keeping with the Court's suggestions at Tr:1140:20-
 11 11:41:13; 1142:7-12; and 1144:3-20, Oracle submits the following proposed instructions for the
 12 Court's consideration:

13 **Instruction No. 1: Good Faith/Bad Faith in Phase One**

14 In considering whether Google's use of the declaring code and structure, sequence, and
 15 organization of the 37 Java API packages was in good faith or bad faith under the first fair use
 16 factor, you should consider only evidence and testimony pertaining to actions and events that
 17 occurred before Oracle filed this lawsuit on August 12, 2010. Your determination of Google's
 18 good faith or bad faith governs all of the versions of Android at issue in this case.

19 **Instruction No. 2: Procedural History**

20 You may have heard from a witness that there was a prior trial in this case. It is true that
 21 there was a prior trial. We have heard and may continue to hear evidence in this trial of a prior
 22 proceeding, which is the earlier trial that occurred in this case. Do not speculate about what
 23 happened in the prior trial. No determination on fair use was made one way or the other in that
 24 trial. It is up to you the jury to determine fair use on your own based on the evidence you hear in
 25 this trial.

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1 Dated: May 16, 2016

Respectfully submitted,

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3 Orrick, Herrington & Sutcliffe LLP

4 By: /s/ Lisa T. Simpson
Lisa T. Simpson

5 Counsel for ORACLE AMERICA, INC.

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